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No. 98-1887

In the

Supreme Court of the United States

October Term, 1998

NORTH CAROLINA RIGHT TO LIFE, INCORPORATED; NORTH CAROLINA RIGHT TO LIFE POLITICAL ACTION COMMITTEE; BARBARA HOLT, President of North Carolina Right to Life Incorporated,
Petitioners,

v.

GARY O. BARTLETT, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF IN OPPOSITION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iv

QUESTION PRESENTED 1

LISTING OF PARTIES 1

CONSTITUTIONAL AND
STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 2

REASONS FOR DENYING THE WRIT 8

I. THE FOURTH CIRCUIT CORRECTLY HELD THAT NORTH CAROLINA'S LIMITATION ON CAMPAIGN CONTRIBUTIONS BY LOBBYISTS AND THEIR EMPLOYERS WHILE THE LEGISLATURE IS IN REGULAR SESSION FURTHERS A LEGITIMATE STATE INTEREST. 9

II. N.C. GEN. STAT. § 163-278.13B DOES NOT CONFLICT WITH THE OPINION OF THE CALIFORNIA SUPREME COURT IN *FAIR POLITICAL PRACTICES COMMISSION v. SUPERIOR COURT OF LOS ANGELES COUNTY.* . 11

III. THE FOURTH CIRCUIT DID NOT ERR IN HOLDING THAT N.C. GEN. STAT. § 163-278.13B IS NARROWLY DRAWN TO ACCOMPLISH A LEGITIMATE STATE INTEREST. 12

A. The Fourth Circuit Properly Did Not Attempt To Distinguish Between Large And Small Contributions From Lobbyists. 13

B. That N.C. Gen. Stat. § 163-278.13B Includes Challengers As Well As Incumbent Candidates Does Not Make The Statute Overbroad. 14

C. Registration And Reporting Requirements Do Not Substitute For A Ban On Lobbyists' Contributions During Legislative Sessions In Avoiding The Appearance Of Corruption. 15

IV. THE FOURTH CIRCUIT DID NOT ERR BY NOT REQUIRING THE STATE TO SHOW THAT N.C. GEN. STAT. § 163-278.13B WAS NARROWLY TAILORED TO FURTHER LEGITIMATE GOVERNMENTAL INTERESTS AND THERE IS NO DISPUTE AMONG THE CIRCUITS REGARDING A TEMPORAL LIMITATION ON THE CONTRIBUTIONS OF LOBBYISTS. 16

A. The Fourth Circuit's Decision Does Not Conflict With The Decisions Of This Court. 16

B. PETITIONERS HAVE SHOWN NO CIRCUIT COURT OPINION WHICH CONFLICTS WITH THE OPINION OF THE FOURTH CIRCUIT IN THE INSTANT CASE. 19

V. COMPLIANCE WITH N.C. GEN. STAT. § 163-278.13B DOES NOT UNCONSTITUTIONALLY COMPEL LOBBYISTS TO RELINQUISH A CONSTITUTIONAL RIGHT. 23

VI. N.C. GEN. STAT. § 163-278.13B DOES NOT DENY PETITIONERS EQUAL PROTECTION OF THE LAWS. 24

VII. THE PRINCIPLES GOVERNING THIS CASE WERE CLEARLY ESTABLISHED IN *BUCKLEY* AND OTHER DECISIONS OF THIS COURT AND CORRECTLY APPLIED BY THE FOURTH CIRCUIT COURT OF APPEALS; CONSEQUENTLY, THIS COURT SHOULD NOT ISSUE ITS WRIT OF CERTIORARI TO REVIEW THE DECISION OF THE FOURTH CIRCUIT IN THIS CASE. 26

CONCLUSION 27

TABLE OF AUTHORITIES

CASES

Association of Community Org. Now v. City of Frontenac, 714 F.2d 813 (8th Cir. 1983) 20

Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990) 9

Buckley v. Valeo, 424 U.S. 1 (1976) ..... passim

CVC v. National Ass'n of Letter Carriers, 413 U.S. 548 (1973) 9,23

Carver v. Nixon, 72 F.3d 633 (8th Cir. 1995), *cert. denied*, 518 U.S. 1033 (1996) 21

Citizens Against Rent Control v. Berkeley, 454 U.S. 290 (1981) 8

Fair Political Practices Comm'n v. Superior Court of Los Angeles County, 599 P.2d 46 (Cal. 1979), *cert. denied*, 444 U.S. 1049 (1980) 11,12

Federal Elections Comm'n v. Massachusetts Right to Life, 479 U.S. 238 (1986) 17

Federal Elections Comm'n v. National Conservative PAC, 470 U.S. 480 (1985) 8

Federal Elections Comm'n v. National Right to Work Comm., 459 U.S. 197 (1982) 18

NAACP v. Button, 371 U.S. 415 (1963) 13

National Advertising Co. v. Town of Babylon, 900 F. 2d 551 (2d Cir.), *cert. denied*, 498 U.S. 852 (1990) 20

North Carolina Right to Life, Inc. v. Bartlett, 3 F. Supp. 2d 675, 681 (E.D.N.C. 1998) 3,4,17

North Carolina Right to Life, Inc. v. Bartlett, 168 F.3d 705 (4th Cir. 1999) ..... *passim*

In re Primus, 436 U.S. 412 (1978) 13

Shrink Missouri Gov't PAC v. Adams, 161 F.3d 519 (8th Cir. 1998), *cert. granted*, 119 S. Ct. 901 (1999) 21,22

Shrink Missouri Gov't PAC v. Maupin, 922 F. Supp. 1413 (E.D. Mo. 1996) 19

Turner Broadcasting System v. FCC, 512 U.S. 622 (1996) 18

United States v. National Treasury Employees, 513 U.S. 454 (1995) 23

Vannatta v. Keisling, 151 F.3d 1215 (9th Cir. 1998), *cert. denied*, 119 S. Ct. 870, 142 L. Ed. 2d 771 (1999) 20,21

Wilson v. Stocker, 819 F.2d 943 (10th Cir. 1987) 21

STATUTES

N.C. Const. art. III § 7(1) 3

N.C. Const. art. III § 8 3

N.C. GEN. STAT. § 120-47.1(6) 25

N.C. GEN. STAT. § 163-278.13A 14

N.C. GEN. STAT. § 163-278.13B 14,18,23,24

N.C. GEN. STAT. § 163-278.13B(a)(1) 3

N.C. GEN. STAT. § 163-278.13B (a)(3) 3

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BRIEF IN OPPOSITION

QUESTION PRESENTED

Respondents do not object to petitioners' presentation of the Question Presented.

LISTING OF PARTIES

Petitioners' listing of the parties omits the respondents who are as follows: Gary O. Bartlett, Secretary-Director of the North Carolina State Board of Elections; Steve A. Balog,

District Attorney for N.C. Prosecutorial District 15A; Michael F. Easley, North Carolina Attorney General; June K. Youngblood, Dorothy Presser, Faiger M. Blackwell, members of the State Board of Elections; S. Katherine Burnette, Secretary of the Board of Elections, and Larry Leake, Chairman of the State Board of Elections.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The principal constitutional and statutory provisions involved in this case are the First and Fourteenth Amendments to the Constitution of the United States and N.C. GEN. STAT. § 163-278.13B.

STATEMENT OF THE CASE

Petitioners, North Carolina Right to Life, Inc., ("NCRL"), North Carolina Right to Life Political Action Committee, ("NCRL-PAC"), and Barbara Holt, President of NCRL and lobbyist for NCRL and NCRL-PAC, filed a complaint against defendants, members of the State Board of Elections of the State of North Carolina ("State Board"), the State Attorney General, and the district attorney for the prosecutorial district in which Ms. Holt lives. Petitioners challenged the constitutionality of various provisions of the North Carolina statutes regulating election campaign finance, including N.C. GEN. STAT. § 163-278.13B (App. 1a), which prohibits lobbyists and political committees and their parent entities which employ

lobbyists[1] from contributing to members of or candidates for the General Assembly and the Council of State[2] while the legislature is in regular session.[3]

The district court held the statute unconstitutional on its face. *North Carolina Right to Life, Inc. v. Bartlett*, 3 F. Supp. 2d 675, 681 (1998). The district court reasoned that "[b]ecause this temporal limitation is a complete ban on fundraising while the legislature is in session, it has 'a severe impact on political dialogue' by 'prevent[ing] candidates from amassing the resources necessary for effective advocacy.'" 3 F. Supp. 2d at 681 (citing *Buckley v. Valeo*, 424 U.S. 1, 24 (1976)). Although noting this Court has recognized that preventing corruption or the appearance of corruption "may be 'legitimate and compelling government interests' for restricting campaign finances," citing *Austin v. Michigan Chamber of Commerce*,

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[1] For the sake of brevity, all references hereinafter to "lobbyist" or "lobbyists" shall be understood to include the political committees or parent entities that employ the lobbyist unless the text indicates otherwise. *See* N.C. GEN. STAT. § 163-278.13B(a)(1) (App. 1a).

[2] The Council of State consists of the Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance. N.C. Const. art. III §§ 7(1), 8 (App. 5a, 7a)

[3] N.C. GEN. STAT. § 163-278.13B(a)(3). (App. 1a) Essentially, the statute covers the "Long Session" of the General Assembly held in non-election, odd-numbered years and the "Short Session" held in even-numbered, election years. The statute does not cover special sessions of the General Assembly called by the Governor.

494 U.S. 652, 658 (1990), and *Federal Elections Comm'n v. National Conservative Political Action Comm.*, 470 U.S. 480, 496-97 (1985), the district court assumed, without deciding, that "the state's asserted aims are legitimate and compelling in this case." 3 F. Supp. 2d at 681. The district court concluded, however, that "the statute is not narrowly tailored to advance the interests in the least intrusive way," because it is applicable to both incumbents and non-incumbents. *Id.* The district court reasoned that the statute failed to take into account that corruption can take place at any time, not just when the legislature is in session, and faulted the statute for not discriminating "between large contributions with the potential to corrupt and small contributions with no such corruptive potential." *Id.*

The Court of Appeals for the Fourth Circuit, in a unanimous decision authored by Chief Judge Wilkinson, reversed the district court's ruling that N.C. GEN. STAT. § 163-278.13B is facially unconstitutional. *North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 714-18 (4th Cir. 1999).[4] First, the Court of Appeals held that the statute did not unconstitutionally burden First Amendment rights of free speech and association. The appeals court recognized that although limits on campaign contributions do implicate those rights, "'[n]either the right to associate nor the right to participate in political activities is absolute.'" *Id.* at 715 (quoting *CSC v. National Ass'n of Letter Carriers*, 413 U.S.

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[4] The Court of Appeals affirmed the district court's determination that other election campaign statutes not at issue here were unconstitutional.

548, 567 (1973)). Then the court, referencing the Lobbying Disclosure Act of 1995, 2 U.S.C. §§ 1601-1612, as an example, observed that "the activities of lobbyists are extensively regulated." *Id.* The court found that North Carolina's statute put only a "temporary hold on appellees' ability to contribute during the General Assembly session, leaving them free to contribute during the rest of the calendar year and to engage in political speech for the entire year." *Id.*

The Court of Appeals held that the temporal ban on contributions does in fact advance the state's interest in combating corruption and the appearance of corruption, which *Buckley* recognized as a legitimate governmental interest. *Id.* Then the Court rejected the contention that only large contributions can corrupt or have the appearance of corrupting the legislative process. The Court held that "[c]orruption, either petty or massive, is a compelling state interest because it distorts both the concept of popular sovereignty and the theory of representative government." *Id.*

Noting cases of legislative influence peddling from several states, the Fourth Circuit held that "[t]he First Amendment does not prevent states such as North Carolina from recognizing these dangers and taking reasonable steps to ensure that the appearance of corruption does not undermine public confidence in the integrity of representative democracy." *Id.* at 716 (citing *Buckley*, 424 U.S. at 26-27). The court rejected petitioners' argument that North Carolina had not proved that it had experienced a particular problem with legislative graft. The court recognized that "[w]hile lobbyists do much to inform the

legislative process, and their participation is in the main both constructive and honest, there remain powerful hydraulic pressures at play which can cause both legislators and lobbyists to cross the line. State governments need not await the onset of scandal before taking action." *Id.*

The Court then found that the statute was narrowly tailored because it was "limited to lobbyists and the political committees that employ them--the two most ubiquitous and powerful players in the political arena," and "the restrictions are temporally limited . . . cover[ing] only that period during which the risk of an actual quid pro quo or the appearance of one runs highest." *Id.* Rejecting again the contention that small contributions do not have the corrosive effect of large ones, the Court of Appeals, citing *Buckley*, 424 U.S. at 30, noted that it had "'no scalpel to probe such fine distinctions,'" but even if it did, "the appearance of corruption may persist whenever a favorable legislative outcome follows closely on the heels of a financial contribution." *Id.*

Rejecting the contention that contributions to non-incumbent candidates cannot corrupt or have the appearance of corruption, the Court reasoned that "sticks can work as well as carrots, and the threat of contributing to a legislator's challenger can supply as powerful an incentive as contributing to that legislator himself." *Id.* Finally, the Court of Appeals disagreed that the statute favored incumbents over challengers and deprived challengers of a significant source of campaign funding. The court found this contention to be "squarely rejected by the Supreme Court in *Buckley*," where this Court

sustained FECA's $1000 limitation on contributions to all legislative candidates, whether incumbents or challengers. "'[T]he danger of corruption and the appearance of corruption apply with equal force to challengers and to incumbents.'" *Id.* at 717 (citing *Buckley*, 424 U.S. at 33). The Court of Appeals believed that "the Court's view [in *Buckley*] was informed by the realization that if challengers and incumbents were required to play by different sets of campaign finance rules, few reforms would be likely to win legislative enactment." *Id.*

The Fourth Circuit proceeded to reject summarily petitioners' argument that lobbyists and the political committees that employ them were denied equal protection of the laws because they are treated differently from members of the general public. *Id.* Finally, the Court of Appeals found no merit in the suggestion that petitioners were "force[d] to forego their constitutional right to petition the government for a redress of grievances if, during the General Assembly session, they wish to exercise their First Amendment right to associate by contributing to candidates and incumbents." *Id.* The court noted that the lobbyists' position is somewhat like that of federal employees, whose right to participate in political campaigns is curtailed under the Hatch Act by virtue of their employment, a curtailment which was reaffirmed by this Court in *CVC v. National Ass'n of Letter Carriers*, 413 U.S. 548 (1973). *Id.* The Court of Appeals found the interests furthered by the statute to be compelling and the burden on petitioners' associational rights minimal. *Id.*

REASONS FOR DENYING THE WRIT

The opinion of the Fourth Circuit cogently enunciates why it upheld the constitutionality of N.C. GEN. STAT. § 163-278.13B as a narrowly drawn, temporal restriction on the power of lobbyists to contribute to candidates for the General Assembly and Council of State of North Carolina while the General Assembly is in regular session. The Fourth Circuit fully considered and rejected all the arguments made by petitioners. The Court of Appeals recognized the statute is directed at those persons and their employers who are in a unique position to improperly influence or appear to improperly influence the actions of legislators and statewide elected officials. The sweep of the statute is no broader and lasts no longer than is absolutely necessary to accomplish the obvious purpose of the statute--preventing corruption or the appearance of corruption of the electoral/legislative process.

Protecting elections from corruption and the appearance of corruption has been repeatedly recognized by this Court as a compelling governmental interest which justifies limited restrictions on First Amendment rights. *Buckley v. Valeo*, 424 U.S. 1, 45 (1976); *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290, 296 (1981); *FEC v. National Conservative PAC*, 470 U.S. 480, 496-97 (1985). The petitioners have shown no conflict in the circuits on the issue of the constitutionality of statutes similar to the one at issue here. They have shown at most only a conflict with the Eighth Circuit on the evidentiary showing a state must make in defending its statutes from constitutional attack. The Petition for Writ of Certiorari

presents no valid reason why the writ should issue. Respondents suggest the only reason why the Court might issue the writ is to affirm the reasoning of the court below.

I. THE FOURTH CIRCUIT CORRECTLY HELD THAT NORTH CAROLINA'S LIMITATION ON CAMPAIGN CONTRIBUTIONS BY LOBBYISTS AND THEIR EMPLOYERS WHILE THE LEGISLATURE IS IN REGULAR SESSION FURTHERS A LEGITIMATE STATE INTEREST.

This Court held in *Buckley* that combating corruption and the appearance of corruption are compelling governmental interests. This Court has similarly held that the government may restrict the participation of certain groups in political campaigns in the furtherance of an overriding governmental interest. *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990); *CVC v. National Ass'n Letter Carriers*, 413 U.S. 548 (1973). North Carolina's temporal restriction on campaign contributions by lobbyists fits well within the dictates of these decisions, as the Fourth Circuit opinion makes clear. There is nothing inherently corrupting about corporations, federal employees, or lobbyists; yet each group, because of its peculiar characteristics, has the potential to distort the electoral or legislative process to the detriment of representative democracy.

Petitioners argue that because anyone may contribute up to $4,000 per candidate per election in North Carolina, there is no reason to believe that a $4,000 contribution to a candidate from a lobbyist is any more corrosive than the same contribution

from anyone else. (*Pet.* at 7) The argument fails because the lobbyist is not another Jane or Joe Citizen. The lobbyists' proximity to legislators and the legislative process distinguishes them from rank and file citizens. However honest the vast majority of lobbyists undoubtedly are, this promixity, when coupled with potentially great financial resources, has the potential to undermine public confidence in the legislative process if lobbyists are seen to be making contributions while legislation is being enacted. North Carolina's legislators, who have a real interest in maintaining the integrity of the legislative process and who must answer to the voters, have determined that while the legislature is in regular session, no campaign contributions should be solicited or accepted from lobbyists. Legislators themselves are in the best position to judge whether contributions from lobbyists during legislative session may corrupt or create the appearance of corruption. The courts are in no better position to second-guess their legislative judgment.

Petitioners argue that there is no reason to believe that contributions by lobbyists made during the legislative session are any more corrupting than contributions made at any other time. A contribution by a lobbyist made while the Legislature is debating legislation that may directly impact the lobbyist's principal has the appearance of a quid pro quo. Moreover, a corrupt legislator is more likely to be influenced by a contribution made while legislation is pending than by one made before the session in the hope or expectation of beneficial results or one after the session in appreciation of services rendered. Finally, as the Fourth Circuit noted, "the appearance

of corruption may persist whenever a favorable legislative outcome follows closely on the heels of a financial contribution." 168 F.3d at 716.

It may well be that a complete ban on contributions from lobbyists as the State of Kentucky has enacted (App. 16a) is constitutional, but North Carolina has not undertaken such action. Rather, the General Assembly of North Carolina has merely declined to permit campaign contributions from lobbyists during the regular session. The limited restriction, focused solely on those who are paid to represent special interests and those entities that pay them, serves to defuse the idea that legislators and legislation may be bought or sold.

II. N.C. GEN. STAT. § 163-278.13B DOES NOT CONFLICT WITH THE OPINION OF THE CALIFORNIA SUPREME COURT IN *FAIR POLITICAL PRACTICES COMMISSION v. SUPERIOR COURT OF LOS ANGELES COUNTY.*

In *Fair Political Practices Comm'n v. Superior Court of Los Angeles County*, 599 P.2d 46 (Cal. 1979), *cert. denied*, 444 U.S. 1049 (1980), the California Supreme Court held unconstitutional a statute that barred all contributions by all lobbyists, at all times, to any state candidate, candidate's political committee, or elected state officer. *Id.* at 49. The state Supreme Court held that "it does not appear that total prohibition of all contributions by any lobbyist is a closely drawn restriction," *id.* at 52, and that "[w]hile either apparent or actual political corruption might warrant some restriction of lobbyist association freedom, it does not warrant total

prohibition of all contributions by all lobbyists to all candidates." *Id.* at 53. The court did uphold a monthly gift limitation of $10 from lobbyists "to any state candidate, a legislative agency or elective state official." *Id.* The court observed that while all have the right to "'petition the Government for redress of grievances,'" and "[t]he lobbyist's function obviously is to exercise such right on behalf of his employer," reasonable registration and reporting requirements do not "directly limit or restrict the right to petition." *Id.* The court pointed out that those restrictions "do[] not substantially interfere with the ability of the lobbyist to raise his voice." *Id.* at 54.

North Carolina's temporal limitation on lobbyists' contributions is much more narrow than the total ban imposed by the California statute and therefore avoids the problems which caused that statute to be voided. Like the California statute limiting the value of gifts, which the California Supreme Court approved, the North Carolina statute does not interfere with the ability of a lobbyist to raise his or her voice in the halls of the legislative buildings during regular sessions. The lobbyist is simply prohibited from adding undue emphasis with a check while the legislature is in session.

III. THE FOURTH CIRCUIT DID NOT ERR IN HOLDING THAT N.C. GEN. STAT. § 163-278.13B IS NARROWLY DRAWN TO ACCOMPLISH A LEGITIMATE STATE INTEREST.

A. THE FOURTH CIRCUIT PROPERLY DID NOT ATTEMPT TO DISTINGUISH BETWEEN LARGE AND SMALL CONTRIBUTIONS FROM LOBBYISTS.

The Court of Appeals correctly declined to substitute its judgment for the state legislature's in regard to the level of lobbyists' contributions that would corrupt or appear to corrupt the legislative process. Petitioners' suggestion that *Buckley* stands for the proposition that only the size of the contribution may be limited and not its timing or source is spurious. The $1,000 contribution limit approved in *Buckley* was defined not just by the amount of the contribution but by its source and its timing. Under the Federal Elections Campaign Act of 1971, as upheld in *Buckley*, political campaign contributions had to originate from individuals and not corporations. The $1,000 limitation on gifts per election was part of a total scheme limiting to $25,000 the amount that may be given in any year by an individual. Thus, an individual who has "maxed out" in a calendar year, must wait until the start of a new year before contributing again. This Court found no constitutional infirmity in this temporal limitation. *Buckley*, 424 U.S. at 38.

Furthermore, the decision by the Fourth Circuit upholding N.C. GEN. STAT. § 163-278.13B does not conflict with either *NAACP v. Button*, 371 U.S. 415 (1963) (holding unconstitutional the application of a statute to bar the NAACP from referring persons whose civil rights were violated to a staff attorney), or *In re Primus*, 436 U.S. 412 (1978) (holding unconstitutional state bar disciplinary action against ACLU attorney for advising persons of their legal rights and referring such person to an ACLU-affiliated attorney). North Carolina

has not sanctioned any lobbyist or organization for representing or purporting to represent the interests of anyone.

B. That N.C. Gen. Stat. § 163-278.13B Includes Challengers As Well As Incumbent Candidates Does Not Make The Statute Overbroad.

Petitioners complain that N.C. Gen. Stat. § 163-278.13B is overbroad because it prohibits lobbyists and their employers from contributing to challengers as well as incumbents. Petitioners initially challenged N.C. Gen. Stat. § 163-278.13A (App. 23a), which applied only to incumbents. During the pendency of this litigation, the statute was amended to include challengers, and petitioners amended their complaint to raise this issue as well. Thus, petitioners in actuality contest any restriction on the ability of lobbyists to make political contributions. The Fourth Circuit rejected the state's argument that since none of the petitioners were challengers for office, they had no standing to raise this issue. The Court went on to observe, that "sticks can work as well as carrots, and the threat of contribution to a legislator's challengers can supply as powerful an incentive as contributing to that legislator himself." 168 F.3d at 716.

If any restriction is valid, then it is valid in application to challengers and incumbents, and as such, is completely consistent with *Buckley*. 424 U.S. at 26 ("To the extent that large contributions are given to secure political quid pro quo's from current *and potential* office holders, the integrity of our system of representative democracy is undermined.").

(Emphasis added.) As this Court noted, "[a]bsent record evidence of invidious discrimination against challengers as a class, a court should generally be hesitant to invalidate legislation which on its face imposes evenhanded restrictions." 424 U.S. at 31. This Court concluded in *Buckley* that contribution limitations should be applied to incumbents and challengers alike. "Since the danger of corruption and the appearance of corruption apply with equal force to challengers and to incumbents, Congress had ample justification for imposing the same fundraising constraints upon both." *Id.* at 33. The Fourth Circuit correctly employed a similar analysis in the instant case.

C. Registration And Reporting Requirements Do Not Substitute For A Ban On Lobbyists' Contributions During Legislative Sessions In Avoiding The Appearance Of Corruption.

Petitioners suggest that because lobbyists must be registered and their contributions reported, the prohibition on contributions during regular legislative sessions is superfluous. The challenged prohibition addresses a concern not covered by registration and reporting requirements. Registration is necessary to identify the paid lobbyists and their clients so legislators know the interests of those paid to influence their votes. Campaign finance reporting requirements are after-the-fact events and may discourage misconduct because amounts contributed will eventually be disclosed and are limited. While a $4,000 contribution may not be corrupting in many circumstances, it can definitely be corrupting or appear to be corrupting if it is given at a crucial point in the legislative

process. The General Assembly has chosen to eliminate at least the appearance of corruption by requiring that lobbyists and their employers make their contributions when the legislature is not meeting. Required deferral of political contributions may in actuality also prevent corruption. Thus, registration and reporting requirements are not a substitute for and do not alone accomplish the purposes of the prohibition on campaign contributions during legislative sessions.

IV. THE FOURTH CIRCUIT DID NOT ERR BY NOT REQUIRING THE STATE TO SHOW THAT N.C. GEN. STAT. § 163-278.13B WAS NARROWLY TAILORED TO FURTHER LEGITIMATE GOVERNMENTAL INTERESTS AND THERE IS NO DISPUTE AMONG THE CIRCUITS REGARDING A TEMPORAL LIMITATION ON THE CONTRIBUTIONS OF LOBBYISTS.

A. THE FOURTH CIRCUIT'S DECISION DOES NOT CONFLICT WITH THE DECISIONS OF THIS COURT.

Petitioners assert that decisions of this Court require that the state prove the actual "existence of the evil" feared. (*Pet.* at 14). Neither the majority nor plurality holdings of the cited cases, nor the concurring and dissented opinions cited, support petitioners' argument.

Although North Carolina, fortunately, could not cite historical examples of legislative corruption within its boundaries, it could cite cases from other jurisdictions. The Court of Appeals found this to be ample support for the reasonableness of the statute. 168 F.3d at 716. This Court has

found that the appearance of corruption from large political contributions was "[o]f almost equal concern as the danger of actual quid pro quo arrangements." *Buckley*, 424 U.S. at 27.[5] Because *Buckley* and subsequent decisions of this Court recognize that avoiding the actuality or appearance of corruption is a compelling governmental interest and that limitations on contributions "require less compelling justification" than limitation on expenditures, *Federal Elections Comm'n v. Mass. Right to Life*, 479 U.S. 238, 259-60 (1986), the only issue is whether the statute is sufficiently narrowly tailored to accomplish that end. In the absence of a showing that the temporal limitation amounts to a "difference[] in kind," *Buckley*, 424 U.S. at 30, the statute does not fail. This Court said in *Buckley* that "[i]t is unnecessary to look beyond the Act's primary purpose--to limit the actuality and appearance of corruption resulting from large individual financial contributions--in order to find a constitutionally sufficient justification for the $1,000 contribution limitation."

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[5] Although they fault the Court of Appeals' upholding the statute without requiring actual proof of corruption or the appearance of corruption in North Carolina, petitioners are not concerned that the district court found, without any support in the record, that because the ban on lobbyists and their employer political committees was complete during regular legislative sessions, it has "'a severe impact on political dialogue'" by "'prevent[ing] candidates from amassing the resources necessary for effective advocacy.'" 3 F. Supp. 2d at 68 (citing *Buckley*, 424 U.S. at 21.) This "finding" is counter-intuitiveat best since the ban is only on lobbyists and their political committees during regular sessions of the legislature. The greatest impact of the ban is in non-election years when the General Assembly holds its "Long Sessions."

Id. at 26. The Court did take notice of "the deeply disturbing examples surfacing after the 1972 election" as evidence that "the problem is not an illusory one." *Id.* at 27.

N.C. GEN. STAT. § 163-278.13B deals not with the problem of large political contributions, but with the appearance, if not indeed the actuality, of contributions by lobbyists while legislators are in the process of enacting or defeating legislation affecting the lobbyists' principals. Because of the unique proximity of lobbyists to the legislative process and the potential for undue influence that this proximity affords, the General Assembly has logically determined that to maintain the confidence of the public and to avoid the appearance of evil, legislators and members of the Council of State and candidates for these positions should not solicit or accept campaign contributions from lobbyists or the organizations that employ them while the legislature is in regular session. No one is in a better position than the legislators themselves to decide what conduct by legislators and those around them might be or appear to be corrupting. *See Federal Elections Comm'n v. National Right to Work Comm.*, 459 U.S. 197, 210 (1982); *see also Turner Broadcasting System v. FCC*, 512 U.S. 622 (1996) (deferring to Congressional findings). The judgment of the legislators, then, in enacting this narrowly drawn prophylactic measure, is to be commended, not condemned.

Petitioners' characterization of this temporal limitation on their ability to make campaign contributions as a major incursion on the rights of free speech and association is a gross

distortion of reality. These rights are barely affected when lobbyists and their principals remain free to contribute up to $4,000 per primary or election to any candidate just as soon as the legislature adjourns.

Petitioners cite *Shrink Missouri Gov't PAC v. Maupin*, 922 F. Supp. 1413 (E.D. Mo. 1996), in which a total ban on political contributions from any source during legislative sessions was held unconstitutional. The district judge discounted not only the opinions of experienced Missouri state legislators that accepting contributions during legislative sessions has the appearance of evil but also examples of legislative corruption in Louisiana. The district court opined in effect that Missouri could validate the ban only on the shortcomings of its own legislators. 922 F. Supp. at 1422. If the holding of the case is correct, it would appear that proof short of a convicted state legislator or a legislator's confession of venality would be inadequate. The district court's view of proof required in the campaign finance context has not been adopted by this Court.

B. PETITIONERS HAVE SHOWN NO CIRCUIT COURT OPINION WHICH CONFLICTS WITH THE OPINION OF THE FOURTH CIRCUIT IN THE INSTANT CASE.

Petitioners claim that cases from other circuits conflict with the decision of the Fourth Circuit in the instant case. None of the cases they cite deal with a temporal restriction on campaign contributions by lobbyists or their principals. None of the cases they cite hold that an *evidentiary* record is required to justify legislation when the justification is apparent. And

none of their cases is apposite in any other manner to the issue presented in the instant case.

In *National Advertising Co v. Town of Babylon*, 900 F. 2d 551 (2d Cir.), *cert. denied*, 498 U.S. 852 (1990), the Second Circuit struck down an ordinance restraining commercial speech because the record contained neither a "statement of a substantial governmental interest" nor extrinsic evidence of any governmental interest. *Id.* at 555. The court recognized that courts did take "judicial notice of a common-sense linkage between a stated governmental interest and a restriction in order to assess . . . that a restriction directly advance[s] the governmental interest asserted." *Id.* at 556.

In *Association of Community Org. Now v. City of Frontenac*, 714 F.2d 813, 818 (8th Cir. 1983), the Eighth Circuit recognized that a municipality has a legitimate governmental interest in preserving the privacy and safety of its citizens. It nevertheless held unconstitutional an ordinance forbidding door-to-door solicitation after 6:00 p.m. as not narrowly tailored to accomplish a legitimate governmental objective--to reduce crime and to prevent unwanted annoyances to residents--where there were several less restrictive alternatives available.

The Ninth Circuit declared unconstitutional a prohibition against out-of-district political contributions on the ground that the prohibition was both under-inclusive and over-inclusive to advance the state's interest in preventing corruption. *Vannatta v. Keisling*, 151 F. 3d 1215, 1221 (9th Cir. 1998), *cert. denied*,

119 S. Ct. 870, 142 L. Ed. 2d 771 (1999). In so holding, the court first rejected the articulated state interest in a republican form of government, noting that had "never before been recognized as a sufficiently important state interest." *Id.* at 1217. The Tenth Circuit in *Wilson v. Stocker*, 819 F.2d 943 (10th Cir. 1987), invalidated a criminal statute prohibiting the distribution of handbills which did not identify the person or organization responsible for the handbill. The court reviewed the articulated government interests without discussion of any evidentiary showing. *Id.* at 948-50.

In *Carver v. Nixon*, 72 F.3d 633 (8th Cir. 1995), *cert. denied*, 518 U.S. 1033 (1996), the Eighth Circuit held unconstitutional a voter-approved measure that set the lowest limits on campaign contributions in the country. The court said that "[t]he state made no showing as to why it was necessary to adopt the lowest contribution limits in the nation and restrict the First Amendment rights of so many contributors in order to prevent corruption or the appearance of corruption with large contributions." *Id.* at 644. The radically low campaign contribution ceiling constituted, in the court's opinion, a difference not merely in degree but in kind. 72 F.3d at 633. The legislation invalidated in each of these cases is unlike the temporal limitation on the contributions by lobbyists where the connection between the legislation and its purpose is readily apparent.

As correctly noted by petitioners, this Court has granted certiorari in *Shrink Missouri Gov't PAC v. Adams*, 161 F.3d 519 (8th Cir. 1998), *cert. granted*, 119 S. Ct. 901 (1999), where

the district court did require "some demonstrable evidence that there were genuine problems that resulted from contributions in amounts greater than the limits in place." *Id.* at 520. The court again was concerned with substantial reduction in campaign contribution ceilings by the legislature. The court found that the newly reduced ceilings set by the legislature were "overly restrictive as a matter of law." The dissent objected to the majority opinion for, among other things, failing to render due deference to state legislative findings. *Id.* at 526 (citing *Turner Broadcasting System v. FCC*, 512 U.S. 622 (1994)). The dissent also noted that the majority had not followed the approach taken by this Court in *Buckley* where, without reliance on specific Congressional findings, this Court held that Congress could reasonably have concluded that large contributions gave rise to the appearance of corruption. *Id.* If this Court wishes to enunciate a standard different from that used in *Buckley*, the *Shrink Missouri* case presents an opportunity to do so. The Fourth Circuit, however, was applying the clear precedents of this Court in the instant case. Absent an intent to enunciate a new standard, the use by the Fourth Circuit of common sense analysis informed by widely reported legislative behavior from other states is no basis for striking a limited North Carolina restriction imposed by legislators on themselves and other legislative candidates. Moreover, these cases do not support petitioners' argument that an evidentiary showing of actual corruption in North Carolina was necessary before the legislature could adopt legislation to further this interest.

V. COMPLIANCE WITH N.C. GEN. STAT. § 163-278.13B DOES NOT UNCONSTITUTIONALLY COMPEL LOBBYISTS TO RELINQUISH A CONSTITUTIONAL RIGHT.

As the Fourth Circuit noted, this Court has sustained substantial restrictions on the speech and associational rights of federal employees by reason of their employment. *Letter Carriers*, 413 U.S. at 548, re-affirming *Public Workers v. Mitchell*, 330 U.S. 75 (1947) (upholding the constitutionality of § 9(a) of the Hatch Act). The temporal limitation imposed by N.C. GEN. STAT. § 163-278.13B on the ability of lobbyists and their employers to make political donations is considerably less than the restriction that the Hatch Act imposes on the political activities of federal employees. The provisions of the Hatch Act were upheld by this Court not simply because they served to protect federal workers from the machinations of politicians, but also, and perhaps more importantly, because the Act furthered two other substantial governmental interests: the "efficiency of public service," *United States v. National Treasury Employees*, 513 U.S. 454, 492 (1995) (Rehnquist, C.J., dissenting), and the "'great end of Government--the impartial execution of the laws.'" *Id.* at 493 (Rehnquist, C.J., dissenting) (quoting *Public Workers*, 413 U.S. at 565). N.C. GEN. STAT. § 163-278.13B also fosters these interests. Lobbyists are protected from the venal legislator, whose attention is gained only by a contribution paid. The public's interest in the fairness of the legislative process is served by assuring that while the legislature is in session, the legislator's vote will not appear to be for sale to the highest bidder.

Petitioners grossly overstate the restriction on their First Amendment rights. The power of lobbyists and their employers to make political contributions is merely deferred while the legislature is in regular session. While the legislature is in session, lobbyists retain undiminished freedom to engage in actual speech and association as opposed to symbolic speech represented by a campaign contribution. This Court held in *Buckley* that pecuniary limits on contributions constitute "only a marginal restriction upon the contributor's ability to engage in free communication." 424 U.S. at 29. This is equally true of temporal limitations. Because N.C. GEN. STAT. § 163-278.13B is completely consistent with the teachings of *Buckley* and its progeny, to sustain petitioners' argument would be to undermine *Buckley*'s holding with respect to campaign contribution limits. If a legislature may validly impose a ceiling on the amount of campaign contributions, it may also validly limit when contributions may be made. Petitioners are, therefore, not confronted with an unlawful Hobson's choice of complying with the statute and yielding a Constitutional right.

VI. N.C. GEN. STAT. § 163-278.13B DOES NOT DENY PETITIONERS EQUAL PROTECTION OF THE LAWS.

Petitioners Holt and NCRL-PAC assert that they are denied equal protection of the laws because non-lobbyists and political committees that do not employ lobbyists are not subject to the temporal restrictions on their political contributions. Petitioners argue that lobbyists are in no better position to influence legislators through their contributions than are other members of the general public. Petitioners argue that

legislators are no more likely to sell their votes to lobbyists than to others. This argument ignores the very reason why groups such as NCRL-PAC employ lobbyists -- for their greater expertise and ability to persuade legislators to vote a certain way. Under N.C. GEN. STAT. § 120-47.1(6) a "lobbyist" is an individual who:

> (a) is employed and receives compensation or who contracts for economic consideration, for the purpose of lobbying; or
>
> (b) represents another person and receives compensation for the purpose of lobbying.

The legislature has determined that this greater expertise at negotiating the legislative process should not be augmented with payments to legislative campaigns while legislation is under consideration because, at the very least, it creates the appearance of impropriety. The General Assembly has carefully distinguished between the average citizen and that citizen who purports to have sufficient legislative expertise to be compensated for his legislative efforts. This is a classification grounded in the experience of legislators with professional lobbyists. The classification, *i.e.*, lobbyists and the employer political committees, does not deny equal protection of the laws if the classification is sufficiently related to a legitimate government interest, *i.e.*, the avoidance of corruption or the appearance of corruption of the electoral/legislative process, and narrowly tailored to accomplish that end. N.C. GEN. STAT. § 163-278.13B meets these criteria.

VII. THE PRINCIPLES GOVERNING THIS CASE WERE CLEARLY ESTABLISHED IN *BUCKLEY* AND OTHER DECISIONS OF THIS COURT AND CORRECTLY APPLIED BY THE FOURTH CIRCUIT COURT OF APPEALS; CONSEQUENTLY, THIS COURT SHOULD NOT ISSUE ITS WRIT OF CERTIORARI TO REVIEW THE DECISION OF THE FOURTH CIRCUIT IN THIS CASE.

North Carolina, like twenty of her sister states, imposes temporal restrictions on campaign contributions by various groups to candidates for the legislature or statewide office. (App. 9a). Although the timing restrictions may vary somewhat, generally the restrictions are for the duration of the legislative session. Typically, legislators and candidates for the legislature are precluded from accepting or soliciting contributions from designated groups during the restricted time period. Lobbyists and political committees may not make political contributions while the legislature is in session or legislation is awaiting gubernatorial action. The fact that at least twenty-one states have enacted statutes imposing time restrictions on campaign contributions demonstrates the widespread belief among legislators from all areas of the country that the avoidance of the actuality or appearance of corruption of the electoral/legislative process demands at least a limited cessation of campaign fundraising while the legislature is in session. If petitioners' argument is accepted, statutes of the twenty-one states may be in constitutional jeopardy. Moreover, the principles undergirding this Court's

approval of limitations on the amount of contributions will be undermined.

CONCLUSION

For these reasons, this Court should not issue its writ of certiorari to review the decision of the Fourth Circuit Court of Appeals upholding North Carolina's limited prohibition on campaign contributions during regular legislative sessions by lobbyists and the political committees that employee them.

Respectfully submitted,

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July 7, 1999

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APPENDIX

TABLE OF CONTENTS

N.C.G.S. § 163-278.13B (1997) 1a

N.C. Const. art. III, § 7(1) 5a

N.C. Const. art. III, § 8 ..... 7a

Table of Restrictions on Lobbyists' Political Contributions 9a

N.C.G.S. § 163-278.13A(1995) (Repealed by Laws 1997, c. 515, 9(a), eff. Jan. 1, 1998.) 23a

N.C.G.S. § 163-278.13B (1997)

WEST'S NORTH CAROLINA STATUTES
CHAPTER 163. ELECTIONS AND ELECTION LAWS
SUBCHAPTER VIII. REGULATION OF ELECTION CAMPAIGNS
ARTICLE 22A. REGULATING CONTRIBUTIONS AND EXPENDITURES IN POLITICAL CAMPAIGNS
PART 1. IN GENERAL

§ 163-278.13B. Limitation on fund-raising during legislative session

(a) Definitions.--For purposes of this section:

(1) "Limited contributor" means a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes, that lobbyist's agent, or a political committee that employs or contracts with or whose parent entity employs or contracts with a lobbyist registered pursuant to Article 9A of Chapter 120 of the General Statutes.
(2) "Limited contributee" means a member of or candidate for the Council of State, a member of or candidate for the General Assembly, or a political committee the purpose of which is to assist a member or members of or candidate or candidates for the Council of State or General Assembly.
(3) The General Assembly is in "regular session" from the date set by law or resolution that the General Assembly convenes until the General Assembly either adjourns sine die or recesses

N.C.G.S. § 163-278.13B (1997), continued. . .

or adjourns for more than 10 days.
(4) A contribution is "made" during regular session if the check or other instrument is dated during the session, or if the check or other instrument is delivered to the limited contributee during session, or if the limited contributor pledges during the session to deliver the check or other instrument at a later time.
(5) A contribution is "accepted" during regular session if the check or other instrument is dated during the session, or if the limited contributee receives the check or other instrument during session and does not return it within 10 days, or agrees during session to receive the check or other instrument at a later time.

(b) Prohibited Solicitations.--While the General Assembly is in regular session, no limited contributee or the real or purported agent of a limited contributee shall:

(1) Solicit a contribution from a limited contributor to be made to that limited contributee or to be made to any other candidate, officeholder, or political committee; or

(2) Solicit a third party, requesting or directing that the third party directly or indirectly relay to the prohibited contributor the prohibited contributee's solicitation of a contribution.

(c) Prohibited Contributions.--While the General Assembly is in regular session:

(1) No limited contributor shall make or offer to make a

N.C.G.S. § 163-278.13B (1997), continued. . .

contribution to a limited contributee.
(2) No limited contributor shall make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a limited contributee.
(3) No limited contributor shall transfer any amount of money or anything of value to any entity, directing or requesting that the entity use what was transferred to contribute to a limited contributee.
(4) No limited contributee shall accept a contribution from a limited contributor.

(c1) Exception.--The provisions of this section do not apply with regard to a limited contributee during the three weeks prior to the day of a second primary if that limited contributee is a candidate who will be on the ballot in that second primary.

(d) Prosecution.--A violation of this section is a Class 2 misdemeanor.

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N.C. Const. art. III, § 7(1)

Sec. 7. Other elective officers.

Statute text

(1) Officers. A Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor, and a Commissioner of Insurance shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

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N.C. Const. art. III, § 8

Sec. 8. Council of State.

Statute text

The Council of State shall consist of the officers whose offices are established by this Article.

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Table of Restrictions on Lobbyists' Political Contributions

STATE AND STATUTE	POLITICAL CONTRIBUTION RESTRICTIONS (EFFECTIVE JUNE 1999)
Alabama ALA. CODE § 17-22A	Candidates for state office and their principal campaign committees may not solicit or accept contributions while the legislature is in session (except when the session is within 120 days of a primary, primary runoff or general election or a special election called by the Governor).
Alaska ALASKA STAT. § 24.45.121	Registered lobbyists may not serve on finance or fundraising committees for campaigns' host fundraising events or actively engage in fundraising activities of legislative campaigns.
Alaska ALASKA STAT. § 15.13.074 (c)(1)-(2)	Groups may not contribute before January 1 of the year of a general election, or to a legislator or a candidate for the legislature while the legislature is in a regular or special session, unless the solicitation occurs within 90 days of the election and outside of the capitol city.

Table of Restrictions on Lobbyists' Political Contributions, continued. . .

STATE AND STATUTE	POLITICAL CONTRIBUTION RESTRICTIONS (EFFECTIVE JUNE 1999)
Alaska ALASKA STAT. §§ 24.45.121 (9) & 24.60.031	Legislators and legislative employees may not solicit or accept contributions, promises, or pledges to make contributions, or accept money from events held outside of an election year or during a legislative session if substantial purpose of the event is to raise money for campaign or political purposes, unless the solicitation occurs within 90 days of the election and outside of the capitol city.

Table of Restrictions on Lobbyists' Political Contributions, continued. . .

STATE AND STATUTE	POLITICAL CONTRIBUTION RESTRICTIONS (EFFECTIVE JUNE 1999)
Arizona ARIZ. REV. STAT. § 41-1234.01	Registered lobbyists may not contribute to legislators during regular sessions of the Legislature or to the Governor during and after regular sessions of the Legislature while legislation is awaiting approval or veto. Registered PACs controlled by a registered principal or a public body are subject to the same limitations as registered lobbyists. Legislators may not accept contributions during regular sessions of the Legislature, and the Governor may not accept contributions during and after regular sessions of the Legislature while legislation is awaiting approval or veto.

Table of Restrictions on Lobbyists' Political Contributions, continued. . .

STATE AND STATUTE	POLITICAL CONTRIBUTION RESTRICTIONS (EFFECTIVE JUNE 1999)
Arkansas ARK. CODE ANN. § 7-6-203	Lobbyists, PACs, and lobbyists' principals may not contribute to members of the Council of State and the General Assembly during the period beginning 30 days before and ending 30 days after any session of the General Assembly. Members of the Council of State and the General Assembly during the period beginning 30 days before and ending 30 days after any session of the General Assembly may not accept campaign contributions. During this period it is also unlawful for any person to promise a contribution to the elected official.

Table of Restrictions on Lobbyists' Political Contributions, continued. . .

STATE AND STATUTE	POLITICAL CONTRIBUTION RESTRICTIONS (EFFECTIVE JUNE 1999)
Colorado COLO. REV. STAT. ANN. §1-45-104(13)(a)(I)-(II)	No professional lobbyist, volunteer lobbyist, or principal of a professional lobbyist or volunteer lobbyist may contribute or promise to contribute to, or solicit or promise to solicit a contribution for candidates or members of the General Assembly or the Council of State. Lobbyists' principals may not contribute during a regular session of the General Assembly. Principals may not contribute to the Governor or a candidate for Governor during a regular session of the General Assembly or when any measure adopted by the General Assembly is pending before the Governor for approval or disapproval. Legislators may not accept contributions from lobbyists or their principals during the regular session of the General Assembly. The Governor cannot accept contributions from lobbyists or their principals during a regular session of the General Assembly or when any measure adopted by the General Assembly is pending before the Governor for approval or disapproval.

Table of Restrictions on Lobbyists' Political Contributions, continued. . .

STATE AND STATUTE	POLITICAL CONTRIBUTION RESTRICTIONS (EFFECTIVE JUNE 1999)
Connecticut CONN. GEN. STAT. ANN. § 9-333*l*(e)	Registered lobbyists may not solicit or make political contributions during certain legislative sessions to any member of the General Assembly. Legislators may not accept contributions from lobbyists or PACs established by or on behalf of a lobbyist during certain legislative sessions.
Georgia GA. CODE ANN. § 21-5-35	Members of the General Assembly, public officers elected statewide, and campaign committees may not accept contributions during any legislative session.

Table of Restrictions on Lobbyists' Political Contributions, continued. . .

STATE AND STATUTE	POLITICAL CONTRIBUTION RESTRICTIONS (EFFECTIVE JUNE 1999)
Iowa IOWA CODE § 56.15A	Lobbyists and PACs may not contribute to the campaign of an elected state official, member of the Legislature, or candidate for state office during a regular session of the Legislature and, in the case of the Governor or gubernatorial candidate, for a period of 30 days following the adjournment of a regular legislative session. Legislators may not accept or solicit campaign contributions during a regular session of the Legislature and, in the case of the Governor or gubernatorial candidate, for a period of 30 days following the adjournment of a regular legislative session.

Table of Restrictions on Lobbyists' Political Contributions, continued. . .

STATE AND STATUTE	POLITICAL CONTRIBUTION RESTRICTIONS (EFFECTIVE JUNE 1999)
Kansas KAN. STAT. ANN. § 25-4153a	Registered lobbyists and PACs may not contribute to a legislator, legislative candidate, or candidate committee between January 1 and May 15 of each year or at any other time the legislature is in session. Legislators, legislative candidates, and candidate committees may not accept contributions between January 1 and May 15 of each year or at any other time the legislature is in session.
Kentucky KY. REV. STAT. ANN. § 6.811(4)	Lobbyists may not make political contributions.
Kentucky KY. REV. STAT. ANN. § 121A.030 (5)	Candidates for Governor and Lt. Governor may not accept contributions during the 28 days immediately preceding a primary or regular election or 14 days before a runoff primary, or after runoff primary elections.

Table of Restrictions on Lobbyists' Political Contributions, continued. . .

STATE AND STATUTE	POLITICAL CONTRIBUTION RESTRICTIONS (EFFECTIVE JUNE 1999)
Louisiana LA. REV. STAT. ANN. § 24:56A	Lobbyists may not contribute funds resulting from fundraising functions held during a legislative session, unless notice of the function is given at least 30 days in advance. Legislators may not accept contributions from lobbyists and lobbyists' principals resulting from fundraising functions while the Legislature is in session, unless proper notice of the function is given.
Minnesota MINN. STAT. § 211A.14	Constitutional office candidates, legislative candidates, and principal campaign committees may not solicit or accept, during a regular or special session, a contribution from a registered lobbyist, a political committee, or a political fund.

Table of Restrictions on Lobbyists' Political Contributions, continued. . .

STATE AND STATUTE	POLITICAL CONTRIBUTION RESTRICTIONS (EFFECTIVE JUNE 1999)
Nevada NEV. REV. STAT. §§ 294A.300 & 294A.310	Candidates and legislators may not solicit or accept any monetary contribution during a period of 30 days before a regular session of the legislature and ending 30 days after the final adjournment of a regular session of the Legislature; or the day after the Governor issues a proclamation calling for a special session of the Legislature and ending 15 days after the final adjournment of the special session.
New Mexico N. M. STAT. ANN. § 1-19-34.1(A)-(B)	Individuals, PACs, and lobbyists' principals may not be solicited by legislators, candidates for the state legislature, and Governor beginning January 1 and ending upon the adjournment of the session or, in the case of the Governor, 20 days after the adjournment. Candidates may not solicit contributions beginning January 1 and ending upon the adjournment of the session or, in the case of the Governor, 20 days after the adjournment.

Table of Restrictions on Lobbyists' Political Contributions, continued. . .

STATE AND STATUTE	POLITICAL CONTRIBUTION RESTRICTIONS (EFFECTIVE JUNE 1999)
North Carolina N.C. GEN. STAT. § 163-278.13B	Lobbyists, PACs and lobbyists' principals may not contribute while the General Assembly is in regular session to candidates for legislature or Council of State. Candidates, legislators, and members of the Council of State may not solicit or accept contributions while the General Assembly is in regular session.
Oregon OR. REV. STAT. § 260.174 (1-6)	Individuals, PACs and lobbyists' principals may not contribute to legislators and candidates for the state legislature and Governor beginning January 1 before a regular biennial session of the Legislative Assembly and ending upon the adjournment of the session or, in the case of the Governor, 30 days after the adjournment. Candidates may not solicit or accept contributions beginning January 1 before a regular biennial session of the Legislative Assembly and ending upon the adjournment of the session or, in the case of the Governor, 30 days after the adjournment.

Table of Restrictions on Lobbyists' Political Contributions, continued. . .

STATE AND STATUTE	POLITICAL CONTRIBUTION RESTRICTIONS (EFFECTIVE JUNE 1999)
Tennessee TENN. CODE ANN. § 2-10-310	Individuals and PACs may not contribute to legislators or the Governor from the convening of the General Assembly's regular annual session to the earlier of May 15 or the conclusion of the annual session. Candidates and legislators may not solicit or accept contributions from lobbyists or lobbyists' principals while the General Assembly is in session.
Tennessee TENN. CODE ANN. § 3-6-108(i)	Lobbyists may not contribute to members of the General Assembly or to the Governor during the regular annual session of the General Assembly.
Texas TEX. ELECTION CODE ANN. § 253.034	Individuals, including lobbyists and lobbyists' principals, and PACs may not contribute to statewide officeholders or a legislator beginning 30 days before the convening of a regular legislative session and continuing through final adjournment. Legislators may not solicit or accept campaign contributions beginning 30 days before the convening of a regular legislative session and continuing through final adjournment.

Table of Restrictions on Lobbyists' Political Contributions, continued. . .

STATE AND STATUTE	POLITICAL CONTRIBUTION RESTRICTIONS (EFFECTIVE JUNE 1999)
Vermont VT. STAT. ANN. Title 2 § 266(3)	Lobbyists and their employers may not contribute or promise to contribute to a member or a member's campaign committee while the General Assembly is in session. General Assembly members and their campaign committees may not accept contributions while the General Assembly is in session.
Washington WASH. REV. CODE § 42.17.710	Contributions may not be solicited or accepted by statewide elected officials or state legislators during the period 30 days before through 30 days after the regular session of the Legislature. Contributions are prohibited during any special legislative session.

Table of Restrictions on Lobbyists' Political Contributions, continued. . .

STATE AND STATUTE	POLITICAL CONTRIBUTION RESTRICTIONS (EFFECTIVE JUNE 1999)
Wisconsin WIS. STAT. § 13.625	Licensed lobbyists may make contributions to elective state officials and candidates for elective office only during the year of the candidate's election, between June 1 and the date of the general election and only if the Legislature is not in session on the date of the contribution. Lobbyists' principals are subject to regulations governing individuals or corporations depending on their status. Candidates and legislators may accept contributions from licensed lobbyists and lobbyists's principals only during the year of the candidate's election, between June 1 and the date of the general election and only if the Legislature is not in session on the date of the contribution.

N.C.G.S. § 163-278.13A(1995) (Repealed by Laws 1997, c. 515, 9(a), eff. Jan. 1, 1998.)

CHAPTER 163. ELECTIONS AND ELECTION LAWS
SUBCHAPTER VIII. REGULATION OF ELECTION CAMPAIGNS
ARTICLE 22A. REGULATING CONTRIBUTIONS AND EXPENDITURES IN POLITICAL CAMPAIGNS
PART 1. IN GENERAL

§ 163-278.13A. No fund-raising from lobbyists for legislators or Council of State members while General Assembly is in regular session.

(a) While the General Assembly is in regular session, none of the following entities may solicit or accept a contribution from, or at the behest or recommendation of, an individual registered as a lobbyist pursuant to Article 9A of Chapter 120 of the General Statutes:

(1) A member of the Council of State; or

(2) A member of the General Assembly; or

(3) A political committee the principal purpose of which is to assist a member or members of the Council of State or General Assembly.

(b) While the General Assembly is in regular session, no individual registered as a lobbyist under Article 9A of Chapter 120 of the General Statutes may make a contribution to any of the entities listed in subdivisions (1) through (3) of subsection (a) of this section.

N.C.G.S. § 163-278.13A(1995) (Repealed by Laws 1997, c. 515, 9(a), eff. Jan. 1, 1998.), continued. . .

(c) This section does not apply to:

(1) Any contribution made to or by a State, county or congressional district executive committee of a political party; or

(2) Any contribution made to or solicited for a political committee that operates on a Statewide basis in conjunction with the executive committee of a political party for the purpose of assisting that party's candidates for Council of State or General Assembly; or

(3) Any contribution made by a member of the Council of State or General Assembly to a political committee the principal purpose of which is to assist himself; or

(4) Any contribution made to or any solicitation for a nonprofit organization under 26 U.S.C. § 501(c); or

(5) Any contribution accepted with the intent that it be used to defray legal or other expenses incurred in connection with the contesting of election results; or

(6) Any contribution to any of the entities listed in subdivisions (1) through (3) of subsection (a) of this section if the member of the Council of State or General Assembly has filed an official notice of

N.C.G.S. § 163-278.13A(1995) (Repealed by Laws 1997, c. 515, 9(a), eff. Jan. 1, 1998.), continued. . .

candidacy with the appropriate board of elections for any elective office, provided the contribution is for the elective office for which the member has filed

(d) A violation of this section is a class 2 misdemeanor, but no individual or person shall be prosecuted under this section for accepting or making a contribution unless the State Board of Elections has notified the individual or person of the apparent violation in writing by certified mail, has given the individual or person an opportunity to return or to request the return of the contribution, and, within 10 days of the receipt of the notification, the individual or person has failed to return or to request the return of the contribution.

(e) For the purposes of this section, the General Assembly is in regular session from the date set by law or resolution that the General Assembly convenes until the General Assembly either:

(1) Adjourns sine die; or

(2) Recesses or adjourns for more than 10 days.

(1991, c. 740, s. 2; 1993, c. 539, s. 1114; 1994, Ex. Sess., c. 24, s. 14(c).)